

§ 2. Requirement That Appropriations Be Authorized

The Constitution⁽⁷⁾ states: “No money shall be drawn from the Treasury, but in consequence of appropriations made by law.” Appropriation bills are the device through which money is permitted to be “drawn from the Treasury” for expenditure.

But before a general appropriation bill may appropriate funds for particular purposes, such purposes must be authorized by law. Thus, an appropriation for a project or activity not authorized by law is not in order on a general appropriation bill, and a point of order may be made against an appropriation that violates this requirement.⁽⁸⁾

It can be seen that every “authorization” for an appropriation is only one step in the process by which funds ultimately may become available, since it contemplates subsequent action through appropriation meas-

ures.⁽⁹⁾ Of course, the House may decline to appropriate funds for particular purposes, even though authorization has been given for such purposes.⁽¹⁰⁾

The enactment of authorizing legislation must occur prior to, and not following, the consideration of an appropriation for the proposed purpose. Thus, delaying the availability of an appropriation pending enactment of an authorization will not protect that appropriation against a point of order.⁽¹¹⁾ A bill violates the intent of the requirement if it permits a portion of a lump sum—unauthorized at the time the bill is being considered—to subsequently become available without a further

7. Art. I §9 clause 7.

8. The prohibition against unauthorized appropriations and legislation on general appropriation bills is found in Rule XXI clause 2, *House Rules and Manual* §834 (1981). The application of this rule is discussed in detail in Ch. 26, *infra*.

9. *Parliamentarian's Note*: It follows, for example, that “authorizing” language does not itself constitute “new spending authority” which would prohibit the consideration of a bill under §401 of the Congressional Budget Act. Where the provision in question either impliedly contemplates further recourse to the appropriations process, or makes express reference to the appropriations process when required by §401, such consideration is not precluded. (Note: The Budget Act is necessarily given only limited treatment herein; see the remarks in §1, *supra*, as to the scope of this article.)

10. See §2.1, *infra*.

11. 118 CONG. REC. 14455, 92d Cong. 2d Sess., Apr. 26, 1972.

appropriation upon the enactment of authorizing legislation.

The “authorization” for an appropriation must ordinarily derive from statute. An executive order, for example, does not constitute sufficient authorization in the absence of proof of its derivation from a statute enacted by Congress.⁽¹²⁾ On the other hand, sufficient “authorization” for an appropriation may be found to exist in a treaty that has been ratified by both parties;⁽¹³⁾ in a resolution of the House of the same Congress;⁽¹⁴⁾ or in legislation contained in a previous appropriation act which has been allowed to become permanent law.⁽¹⁵⁾

An appropriation in excess of the specific amount authorized by law is in violation of the rule prohibiting unauthorized appropriations.⁽¹⁶⁾

The rule prohibiting unauthorized appropriations and legislation on general appropriation bills was originally intended primarily to prevent any delay of appropriation bills that might arise from conten-

tion over propositions of legislation. However, as the authorization process itself became more complicated over the years, and as the number of programs requiring annual authorization increased, there were frequent instances where the congressional appropriations process remained uncompleted at the beginning of a new fiscal year. The rule as currently implemented serves the purpose of giving legislative committees the first opportunity to determine and report to both Houses on priorities within specific legislative programs and the conditions under which available funds may be expended, before the Appropriations Committee recommends allocations of available revenues among various legislative priorities during a given fiscal year. Procedures under the Congressional Budget Act generally contemplate authorization of expenditures by legislative committees as a prior step in the budget process. (See, for example, Congressional Budget Act §§ 301(c) and 402(a).)

It should be emphasized that the rule applies to “general appropriation bills.” Neither a resolution providing an appropriation for a single government agency,⁽¹⁷⁾

12. See 119 CONG. REC. 19855, 93d Cong. 1st Sess., June 15, 1973 (proceedings related to H.R. 8619). See also §§ 2.3, 2.4, *infra*.

13. See 4 Hinds' Precedents § 3587.

14. See 4 Hinds' Precedents §§ 3656–3658, 3660.

15. See § 2.5, *infra*.

16. See Ch. 26, *infra*.

17. 108 CONG. REC. 1352, 87th Cong 2d Sess., Jan. 31, 1962.

nor a joint resolution containing continuing appropriations for diverse agencies (to provide funds until regular appropriation bills are enacted),⁽¹⁸⁾ is considered a general appropriation bill within the purview of the rule. In fact, the restrictions against unauthorized items or legislation in a general appropriation bill or amendment thereto are not applicable to a joint resolution continuing appropriations, despite inclusion of diverse appropriations which are not "continuing" in nature.⁽¹⁾

Refusal to appropriate for Authorized Purposes

§ 2.1 The House in the Committee of the Whole has the right to refuse to appropriate for any object either in whole or in part, even though that object may be authorized by law.

On Feb. 18, 1938,⁽²⁾ during consideration of the State, Justice,

18. See *Procedure in the U.S. House of Representatives* Ch. 25 §2.2 (4th ed.).

1. See *Procedure in the U.S. House of Representatives* Ch. 25 §2.3 (4th ed.).

2. 83 CONG. REC. 2174, 2175, 75th Cong. 3d Sess. The principle is well established. See also, for example, 88 CONG. REC. 2114, 2115, 77th Cong. 2d Sess., Mar. 9, 1942 (a refusal to appropriate above a certain amount per designated recipient).

Commerce, and Labor appropriations for 1939 (H.R. 9544), an amendment was offered as follows:

Amendment offered by Mr. Tarver: On page 104, after line 25, insert a new paragraph, as follows:

No part of any appropriation contained in this act for the Immigration and Naturalization Service shall be expended for any expense incident to any procedure by suggestion or otherwise, for the admission to any foreign country of any alien unlawfully in the United States for the purpose of endeavoring to secure a visa for readmission to the United States, or for the salary of any employee charged with any duty in connection with the readmission to the United States of any such alien without visa.

The following proceedings then took place:

MR. [SAMUEL] DICKSTEIN [of New York]: Mr. Chairman, I make the same point of order. This comes right back to the point I made originally, that this provision deals with the present immigration laws and is legislation on an appropriation bill. It changes our present act, which contains the provision that it is mandatory upon the officials of the Department of Labor to advise an alien of his status, whether he is legally or illegally in this country. This provision seems to suggest that even a suggestion or an inference, even a suggestion over the phone, would be a violation of the law, and the men who are on the pay roll of the Government would be penalized. I respectfully submit that the language offered as

the amendment to the new section is absolutely in the same category, and that it is not germane to the present bill or to the section now under consideration.

THE CHAIRMAN:⁽³⁾ The Chair is ready to rule.

The gentleman from New York (Mr. Dickstein) makes the point of order that the amendment now suggested and offered by the gentleman from Georgia is legislation. The Chair feels he is bound by precedents which have been established for a long time in this House and have been ruled upon by many occupants of the chair more distinguished than he.

The fact that the failure to appropriate money to carry out the purposes of an act may work an actual hardship in the enforcement of that act or may even effect the practical repeal or certain provisions of the act is entirely within the discretion of Congress itself. Congress does not have to appropriate any money for laws which have been authorized by bills reported from legislative committees. As long ago as 1896 Nelson Dingley, Chairman of the Committee of the Whole House, ruled as follows, and I read from page 47 of Cannon's Procedure in the House of Representatives:

The House in Committee of the Whole House has the right to refuse to appropriate for any object either in whole or in part even though that object may be authorized by law. That principle of limitation has been sustained so repeatedly that it may be regarded as a part of the parliamentary law of the Committee of the Whole.

Therefore, the Chair is unable to agree with the contention of the gen-

3. Frank H. Buck (Calif.).

tleman from New York and overrules the point of order.

Court Judgment as Authorization

§ 2.2 An appropriation to pay a judgment awarded by a court is not in order unless such judgment has been properly certified to Congress.

On June 20, 1935,⁽⁴⁾ the Committee of the Whole was considering H.R. 8554, a deficiency appropriation bill. The following proceedings took place:

MR. [FRANK] CARLSON [of Kansas]: Mr. Chairman, I offer an amendment, which I send to the desk.

The Clerk read as follows:

Mr. Carlson moves to amend H.R. 8554, page 6, by inserting a new paragraph following line 6, entitled "Federal Trade Commission":

"For payment to Mrs. William E. Humphrey, or executor of the estate of William E. Humphrey, \$3,017 amount due as salary at time of his death as member of Federal Trade Commission."

MR. [JAMES P.] BUCHANAN [of Texas]: Mr. Chairman, I make the point of order that the amendment is new legislation in that the judgment has not been certified according to law.

. . .

THE CHAIRMAN:⁽⁵⁾ The Chair is ready to rule. Under the law,⁽⁶⁾ judg-

4. 79 CONG. REC. 9811, 74th Cong. 1st Sess.

5. Franklin W. Hancock, Jr. (N.C.).

6. The Chair apparently relied on provisions governing procedures where-

ments have to be certified to the Congress before an appropriation is made; therefore the Chair sustains the point of order.

Executive Order as Authorization

§ 2.3 The words “authorized by law” in Rule XXI clause 2, were construed to refer to a “law enacted by the Congress,” and not to encompass executive orders.

On Mar. 2, 1945,⁽⁷⁾ the Committee of the Whole was consid-

by claimants obtaining judgments against the United States are compensated from appropriations made for that purpose. See, for example, the present 28 USC §2518 (based on 26 Stat. 537, Sept. 30, 1890 and 43 Stat. 939, Feb. 13, 1925), regarding certification to Congress of judgments of the Court of Claims; see also 28 USC §2517 (payment of judgments of the Court of Claims out of general appropriations therefor); 28 USC §2414 (payment of judgments and compromise settlements on claims against the United States); 31 USC §724a (permanent appropriation to pay final judgments, awards, and compromise settlements); 28 USC §§2671 et seq. (tort claims procedure); and House Rule XXII clause 2, *House Rules and Manual* §852 (1981) (prohibiting private bills and resolutions, and amendments to bills and resolutions, authorizing payment of claims for which suit may be instituted under tort claims procedure).

7. 91 CONG. REC. 1682, 1683, 79th Cong. 1st Sess.

ering H.R. 2374, a deficiency appropriation bill. At one point the Clerk read as follows:

WAR RELOCATION AUTHORITY

Salaries and expenses: The limitation in the appropriation for salaries and expenses, War Relocation Authority, in the National War Agency Appropriation Act, 1945, on the amount which may be expended for travel is hereby increased from \$375,000 to \$475,000; and of said appropriation not to exceed \$280,477 is made available for expenses incurred during the fiscal year 1945 incident to the establishment, maintenance, and operation of the emergency refugee shelter at Fort Ontario, N.Y., provided for in the President's message of June 12, 1944, to the Congress (H. Doc. 656).

MR. [HENRY C.] DWORSHAK [of Idaho]: Mr. Chairman, I make the point of order against that part of the section following the semicolon in line 20 and ending on page 14, line 2, that it is legislation on an appropriation bill; furthermore, that there is no specific authority in existing statutes for the operation of this particular program. The Executive order of the President which created the War Relocation Authority does not encompass the activities for which these funds would be used. . . .

THE CHAIRMAN:⁽⁸⁾ The Chair is prepared to rule.

The gentleman from Idaho [Mr. Dworshak] makes the point of order against the language beginning in the concluding part of line 20 on page 13 and extending through the balance of

8. John J. Sparkman (Ala.).

the paragraph, that this appropriation is not authorized by law.

Under the rules of the House, no appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law.

It is the opinion of the Chair that an Executive order does not meet the requirement stated in that rule. Therefore, not being authorized by law enacted by Congress, the appropriation would not be in order. The mere fact that it may be a reappropriation would not make it in order if the original appropriation was not authorized by law.

Therefore, the Chair sustains the point of order made by the gentleman from Idaho.

§ 2.4 An executive order does not meet the requirement that appropriations must be authorized by law.

On July 5, 1945,⁽⁹⁾ the following proceedings took place:

MR. [CLARENCE] CANNON of Missouri: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3649), making appropriations for war agencies for the fiscal year ending June 30, 1946, and for other purposes; and pending that motion, Mr. Speaker, I ask unanimous consent to dispense with general debate in the Committee of the Whole. . . .

9. 91 CONG. REC. 7226, 7227, 79th Cong. 1st Sess.

THE SPEAKER:⁽¹⁰⁾ The question is on the motion offered by the gentleman from Missouri.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3649) with Mr. Sparkman in the chair. . . .

MR. CANNON of Missouri: Mr. Chairman, I ask unanimous consent that the bill be considered as read and that all Members desiring to submit amendments or points of order have leave to submit them at this time.

THE CHAIRMAN:⁽¹¹⁾ Is there objection to the request of the gentleman from Missouri?

There was no objection.

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, in view of the unanimous consent request that has just been granted, I make the point of order against the first item, National War Labor Board, on the ground that it is an appropriation not authorized by law.

MR. CANNON of Missouri: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The point of order is sustained.

MR. MARCANTONIO: Mr. Chairman, I make a point of order on the same ground against the item for the Office of Defense Transportation on page 5.

MR. CANNON of Missouri: The point of order is conceded, Mr. Chairman.

THE CHAIRMAN: The gentleman from New York (Mr. Marcantonio) makes a point of order which the gentleman

10. Sam Rayburn (Tex.).

11. John J. Sparkman (Ala.).

from Missouri (Mr. Cannon) concedes. The Chair sustains the point of order.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, we do not all have to concede the point of order. I want to ask the gentleman from Missouri a question. . . .

MR. RANKIN: . . . If these were times of peace and this agency had been created by the Executive order, as it was, I submit that a point of order would lie against it. But the President of the United States is the commander in chief of the armed forces. One of the necessary incidents to that position is the ability and the power to see that our troops and the materials to support them are transported. For that reason, in order to break a bottleneck in our transportation system, the President of the United States set up the Office of Defense Transportation. . . .

THE CHAIRMAN: The Chairman again states his opinion, regardless of his own beliefs as to the merits of this particular office, that the point of order must be sustained.

The rule is very explicit to the effect that no appropriation shall be reported in any general appropriation bill or be in order as an amendment thereto, for any expenditure not previously authorized by law.

In this present Congress, the present occupant of the chair ruled that an Executive order was not a law such as could comply with this rule.⁽¹²⁾

The Chair sees no reason for departing from that holding. The Chair feels constrained to sustain the point of order.

12. See §2.3, *supra*.

The point of order is sustained.⁽¹³⁾

Language in Prior Appropriation Measure as Authorization

§ 2.5 Legislation in an appropriation bill may be subject to a point of order under Rule XXI clause 2, but it may become permanent law if it is not challenged and is permanent in its language and nature; thus, language in a previous appropriation act providing that “hereafter such sums . . . as may be approved by Congress shall be available (to increase domestic consumption of farm commodities),” was held to be permanent authorizing legislation capable of supporting subsequent appropriations therefor.

On May 20, 1964,⁽¹⁴⁾ during consideration in the Committee of the Whole of the agriculture appropriations bill (H.R. 11202) for fiscal 1965, Mr. Paul Findley, of Illinois, raised a point of order as follows:

MR. FINDLEY: My point of order is to lines 3 through 9, the portion of the

13. See also 119 CONG. REC. 19855, 93d Cong. 1st Sess., June 15, 1973 (H.R. 8619).

14. 110 CONG. REC. 11422, 11423, 88th Cong. 2d Sess.

section beginning with the figure in parentheses 5. I will read it. It reads as follows:

(5) not in excess of \$25,000,000 to be used to increase domestic consumption of farm commodities pursuant to authority contained in Public Law 88-250, the Department of Agriculture and Related Agencies Appropriation Act, 1964, of which amount \$2,000,000 shall remain available until expended for construction, alteration and modification of research facilities.

There is legislation in an appropriation bill. . . .

THE CHAIRMAN:⁽¹⁵⁾ The Chair is ready to rule. The gentleman from Illinois (Mr. Findley) makes a point of order addressed to the language appearing on page 16, line 2, beginning with "and" and continuing through and including line 9, on the ground that it is legislation on an appropriation bill.

The Chair has had called to its attention the section which was contained in Public Law 88-250, in which it appears that the appropriation here, which incidentally is also in the nature of a limitation, was authorized by the Congress by the inclusion of the words pointed out by the gentleman from Mississippi that "hereafter such sums (not in excess of \$25,000,000 in any one year) as may be approved by the Congress shall be available for such purpose," and so forth.

The Chair therefore holds that the language in that public law cited is authority for the inclusion in the pending bill of the language to which the point of order was addressed, and therefore overrules the point of order.

§ 2.6 A point of order having been raised that a portion of

15. Eugene J. Keogh (N.Y.).

a lump sum supplemental appropriation for the White House was not authorized by law, the Chairman determined that the permanent law authorizing the President to appoint certain staff, as well as legislative provisions authorizing additional employment contained in an earlier regular appropriation bill enacted for that fiscal year, constituted sufficient authorization.

On Nov. 30, 1973,⁽¹⁶⁾ during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 11576) a point of order was raised against a provision, as follows:

The Clerk read as follows:

THE WHITE HOUSE OFFICE

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", \$1,500,000.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, a point of order. . . .

I raise a point of order to the language of lines 5, 6, 7, and 8 of page 14 under the provisions of rule XXI, clause 2, which prohibits legislation on appropriation bills and which prohibits the appropriation of funds without prior legislative authorization.

Mr. Chairman, I would now like to read from the language of the commit-

16. 119 CONG. REC. 38854, 38855, 93d Cong. 1st Sess.

tee's report on White House office, salaries and expenses:

The Committee recommends an appropriation of \$1,500,000, a reduction of \$110,000 below the amount of the budget estimate.

These supplemental funds were requested to provide the additional funds needed for the activities of the Counselors to the President and their staffs, the President's Foreign Intelligence Advisory Board, the President's Special Assistant for Consumer Affairs, the Council on Economic Policy, and other professional staff and consultants.

Mr. Chairman, before I pursue this matter further, I would point out first of all that when an item in an appropriation bill is defective as violative of the rules of the House—in this instance, Rule XXI, clause 2—the whole of the particular item under the point of order falls.

I would point out further, Mr. Chairman, that my point of order is directed specifically to the President's special assistant for consumer affairs and to that office, which was challenged earlier on this floor this year by the gentleman from Iowa (Mr. Gross). Upon his point of order the Chair acted affirmatively and ruled in support of the point of order and ruled out the item.

I challenge further on the same grounds, Mr. Chairman, the appropriations for counsellor to the President in that there is no statutory authority for counsellors to the President. I challenge further the President's foreign intelligence advisory board in that there is also, to my knowledge, no statutory authority for this particular office.

Also, Mr. Chairman, I challenge on the same grounds again the counsel on

economic policy of the President and his staff and offices, appurtenances and expenditures pertinent thereto. I would point out further, Mr. Chairman, that under the rules of the House of Representatives, that the burden is upon the proponent of the appropriation bill to establish the legislative basis and to cite the statutes upon which the Appropriations Committee bases its action in appropriating funds. . . .

THE CHAIRMAN:⁽¹⁷⁾ . . . Sections 103, 105, and 106 of title 3 authorize appropriations for the purpose of paying the salaries of certain persons in the Executive Office of the President. The appropriation bill itself, in the paragraph beginning on page 14, line 5, gives no indication that the appropriation would be used for any unauthorized purpose. The paragraph merely provides a lump sum for the Executive Office.

The gentleman from Michigan, in making his point of order, goes beyond the provisions of the bill and looks at the provisions of the committee report.

The Chair does not believe that in this case, any more than in the case made by the gentleman from Iowa earlier in the consideration of the bill, it is within his province to go beyond the plain provisions of the bill, and the authorizing statute.

The Chair, therefore, overrules the point of order.

Parliamentarian's Note: The earlier ruling cited by Mr. Dingell had taken place on June 15, 1973. Chairman James C. Wright, Jr., of Texas, had sustained a point of

17. James G. O'Hara (Mich.).

order against an appropriation for the Office of Consumer Affairs, established by executive order, where the Committee on Appropriations had not cited statutory authority for the appropriation (contained in H.R. 8619, agriculture-environment and consumer protection appropriations bill). Congress subsequently enacted Public Law No. 93-143, the Treasury, Executive Office Appropriations Act for fiscal 1974, containing funds for the White House Office and legislation, effective for the same fiscal year covered by the supplemental appropriation bill, permitting the President to employ consultants notwithstanding other provisions of law. For that reason, and because it was not readily apparent from the language of either the supplemental bill, the authorizing statute, or the committee report that a portion of the lump sum was to fund an unauthorized office, the Chair overruled the point of order.

Appropriation Bill as Containing Specific Approval

§ 2.7 The restriction in law prohibiting the use of any funds for the preparation of final plans or for construction of the west front extension “until specifically approved and appropriated

therefor by the Congress” was held not to require legislative “approval” prior to the appropriation, where the legislative history of the law indicated that other law was to be considered sufficient authorization for the project and that only further approval through the appropriation process was required.

On Apr. 17, 1973,⁽¹⁸⁾ during consideration in the Committee of the Whole of the legislative branch appropriations bill (H.R. 6691) for fiscal 1974, Mr. J. Edward Roush, of Indiana, raised a point of order against the following language in the bill, and proceedings ensued as indicated:

EXTENSION OF THE CAPITOL

For an amount, additional to amounts heretofore appropriated, for “Extension of the Capitol”, in substantial accordance with plans for extension of the West Central front heretofore approved by the Commission for Extension of the United States Capitol, to be expended, as authorized by law, by the Architect of the Capitol under the direction of such Commission, \$58,000,000, to remain available until expended. . . .

MR. ROUSH: Mr. Chairman, my point of order is based upon these following facts: The appropriation as proposed

18. 119 CONG. REC. 12781, 12782, 93d Cong. 1st Sess.

lacks legislative authority and, secondly, the language "\$58,000,000 to remain available until expended" constitutes legislation on a general appropriation bill. . . .

I would refer to the appropriation bill last year, which would be Public Law 92-342, under the section "Extension of the Capitol:"

Funds available under this appropriation may be used for the preparation of preliminary plans for the extension of the west central front: *Provided, however*, That no funds may be used for the preparation of the final plans or initiation of construction of said project until specifically approved and appropriated therefor by the Congress.

I point out to the Chairman that the plans have not been specifically approved. . . .

Mr. Chairman, I have searched this matter diligently and the only authority that I can find for the extension of the west front of the Capitol necessarily has to be inferred from the language of a bill which was passed in 1855. . . .

MR. [ROBERT R.] CASEY of Texas: . . . Mr. Chairman, this project is authorized, and I would point out that the gentleman from Indiana (Mr. Roush) who is making the point of order, failed to read all of Public Law 242 of the 84th Congress.

The law reads:

Extension of the Capitol: The Architect of the Capitol is hereby authorized, under the direction of a Commission for Extension of the United States Capitol, to be composed of the President of the Senate, the Speaker of the House of Representatives—

Et cetera.

In substantial accordance with Scheme B of the architectural plan submitted by a joint commission of Congress and reported to Congress on March 3, 1905 (House Document Numbered 385, Fifty-Eighth Congress), but with such modifications and additions, including provisions for restaurant facilities and such other facilities in the Capitol Grounds, together with utilities . . .

It does not just refer to one item. I think this gives great latitude.

Together with utilities, equipment, approaches, and other appurtenant or necessary items . . . there is hereby appropriated \$5,000,000, to remain available until expended: *Provided*, that the Architect of the Capitol under the direction of said commission and without regard to the provisions of section 3709 of the Revised Statutes, as amended, is authorized to enter into contracts.

Et cetera.

This law was amended February 14, 1956, and there was added this amendment under "Extension of the Capitol." This was Public Law 406, 84th Congress:

The paragraph entitled "Extension of the Capitol" in the Legislative Appropriation Act, 1956, is hereby amended by inserting after the words "to remain available until expended" and before the colon, a comma and the following: "and there are hereby authorized to be appropriated such additional sums as may be determined by said Commission to be required for the purposes hereof. . . ."

THE CHAIRMAN:⁽¹⁹⁾ . . . The gentleman from Indiana . . . contends that Public Law 92-342 requires "specific" approval by Congress of prepara-

19. John M. Murphy (N.Y.).

tion of final plans or initiation of construction prior to an appropriation therefor. The Chair has examined the legislative history of the provision relied upon by the gentleman from Indiana in support of his argument that the appropriation must be specifically approved by Congress prior to the appropriation, and it is clear from the debate in the Senate on March 28, 1972, that approval in an appropriation bill was all that was required by the provision in Public Law 92-342. The Chair feels that there is sufficient authorization contained in [Public Law 84-242] as amended by Public Law 84-406 for the appropriation contained in the pending bill, and that no further specific authorization is required prior to an appropriation for final plans and construction for the West Front.

For these reasons the Chair overrules the point of order.

§ Sec. 2.8 An amendment to a general appropriation bill providing that appropriations in the bill available for travel expenses were to be available for expenses of attendance of officers and employees at meetings or conventions was held to be in order since such provision was authorized to be included in appropriation bills by statutory provisions.

On May 2, 1951,⁽²⁰⁾ the Committee of the Whole was consid-

20. 97 CONG. REC. 4738, 82d Cong. 1st Sess.

ering H.R. 3790, an Interior Department appropriation. The following proceeding took place:

Amendment offered by Mr. Jackson of Washington: On page 36, line 17, insert the following:

Sec. 104. Appropriations in this act available for travel expenses shall be available for expenses of attendance of officers and employees at meetings or conventions of members of societies or associations concerned with the work of the bureau or office for which the appropriation concerned is made.

MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make the point of order against the amendment that it involves legislation on an appropriation bill and is not authorized by law. . . .

THE CHAIRMAN:⁽²¹⁾ The gentleman from Washington has called the attention of the Chair to section 83, title 5 of the United States Code. Permit the Chair to read the language contained in that provision:

No money appropriated by any act shall be expended for membership fees or dues of any officer or employee of the United States or of the District of Columbia, in any society or association or for expenses of attendance of any person at any meeting or convention of members of any society or association unless such fees, dues, or expenses are authorized to be paid by specific appropriations for such purposes or are provided for in express terms in some general appropriation.

The Chair feels that the language which has just been read governs the matter and overrules the point of order

21. Wilbur D. Mills (Ark.).

made by the gentleman from New York.

Senate Confirmation of Appointees Required Prior to Appropriation for Positions

§ Sec. 2.9 Although the President has the power to appoint foreign ambassadors and ministers, an appropriation to pay such salaries is not in order unless the Senate has confirmed the appointment.

On Aug. 17, 1937,⁽²²⁾ the Committee of the Whole was considering H.R. 8245, a deficiency appropriation bill. The proceedings were as follows:

Salaries of ambassadors and ministers: For an additional amount for salaries of ambassadors and ministers, fiscal year 1938, for the salary of an envoy extraordinary and minister plenipotentiary to Lithuania at \$10,000 per annum, \$8,333.34: *Provided*, That the appropriation for salaries of ambassadors and ministers, fiscal year 1938, shall be available for payment of the salary of an envoy extraordinary and minister plenipotentiary to Estonia and Latvia at \$10,000 per annum. . . .

MR. [HAMILTON] FISH [JR., of New York]: Mr. Chairman, I make a point on order against the language on page 28, lines 4 to 12, inclusive, as constituting legislation on an appropriation

bill, not authorized by law. It creates a new position, that of Minister of Lithuania. The President has no constitutional right and is empowered by no act of Congress to create additional positions. Therefore, I make the point of order, Mr. Chairman, and if the Chair is in doubt I would like to speak a little further on the matter and cite some precedents. . . .

MR. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Chairman, I think the item is subject to a point of order for the reason that the Minister has been appointed but not confirmed. The President has the right to appoint, but if the minister has not been confirmed the Congress would have no right to appropriate. There has been no confirmation. I think the gentleman's point of order is well taken, if he chooses to make it. . . .

The Chairman:⁽¹⁾ The Chair is ready to rule. As stated by the gentleman from Virginia, the President has the right to appoint. At the present time, however, the Senate has not confirmed the appointment. The appropriation, therefore, is subject to a point of order.

The Chair sustains the point of order.

Implied Authorization

§ Sec. 2.10 Appropriations for travel expenses, including examination of estimates for appropriations in the field, under the heading "Office of the Secretary, Department of Agriculture," were held authorized by law as necessary

22. 81 CONG. REC. 9175, 9176, 75th Cong. 1st Sess.

1. Claude V. Parsons (Ill.).

to carry out the basic law setting up the Department of Agriculture.

On Apr. 27, 1950,⁽²⁾ the Committee of the Whole was considering H.R. 7786, the Department of Agriculture chapter of the general appropriation bill of 1951. The following proceedings took place:

MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make a point of order against the language appearing in lines 6 to 7, page 204, "travel expenses, including examination of estimates for appropriations in the field." . . .

THE CHAIRMAN:⁽³⁾ The Chair is prepared to rule.

The gentleman from New York [Mr. Keating] has made a point of order against the language appearing on page 204 of the chapter beginning in line 6, which has been quoted by him, on the ground that it is legislation on an appropriation bill in violation of the rules of the House. The Chair has examined the language and has listened attentively to the arguments presented and has also made an examination of the precedents and decisions of the House. It appears that in 1938 a point of order was made against language similar to this, and the Chairman, Mr. Jones, of Texas, overruled the point of order. The decision is found on page 2656 of the Record of March 1, 1938. On the basis of that precedent and de-

cision the Chair overrules the point of order.

The 1938 decision relied on by the Chair took place during consideration of H.R. 9621, appropriations for the Department of the Interior. An amendment had been offered, reading in part as follows:⁽⁴⁾

Amendment offered by Mr. Scrugham: Page 72, beginning with line 12, insert the following:

Administration provisions and limitations: For all expenditures authorized by the act of June 17, 1902, and acts amendatory thereof or supplementary thereto, known as the reclamation law, and all other acts under which expenditures from said fund are authorized, including not to exceed \$100,000 for personal services and \$15,000 for other expenses in the office of the chief engineer . . . ; examination of estimates for appropriations in the field; refunds of overcollections and deposits for other purposes; not to exceed \$15,000 for lithographing, engraving, printing, and binding.

The following exchange took place:

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment upon the ground that it is legislation upon an appropriation bill, that it includes items not authorized by law, as, for instance, \$5,000 for making photographic prints, not authorized by law in line 20 and in line 22, provision for examination of estimates for appropriations in

2. 96 CONG. REC. 5911, 81st Cong. 2d Sess.

3. Jere Cooper (Tenn.).

4. 83 CONG. REC. 2655, 2656, 75th Cong. 3d Sess., Mar. 1, 1938.

the field, which is not authorized by law; \$15,000 for lithographing and engraving, not authorized by law; the purchase of ice, the purchase of rubber boots for official use by employees, not authorized by law.

THE CHAIRMAN: The Chair is ready to rule. This amendment provides for all expenditures authorized by the act of June 17, 1902, and acts amendatory thereof or supplemenatary thereto, known as the reclamation law, and all other acts under which expenditures from said fund are authorized, and so forth. The Chair thinks that the items to which the gentleman from New York objects specifically are incidental to the main purpose of carrying out the reclamation law. These incidental items it seems to the Chair are necessary to carry out the major purposes of the reclamation law, and the Chair, therefore, overrules the point of order.

Mr. Taber offered an amendment to strike the words "examination of estimates for appropriations in the field," which amendment was rejected.

Specific Project Authorized by General Grant of Authority

§ 2.11 Legislation authorizing the Administrator of the Federal Aviation Administration to develop and test improved aircraft, and legislation transferring and vesting those functions "including the development and construction of a civil supersonic aircraft" in the Sec-

retary of Transportation was held to authorize an appropriation for the construction of prototypes of the civil supersonic aircraft.

On May 27, 1970,⁽⁵⁾ during consideration in the Committee of the Whole of the Department of Transportation appropriation bill for fiscal 1971 (H.R. 17755), Mr. Sidney R. Yates, of Illinois, raised a point of order against certain language in the bill:

For an additional amount for expenses, not otherwise provided for, necessary for the development of a civil supersonic aircraft, including the construction of two prototype aircraft of the same design, and advances of funds without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529), \$289,965,000, to remain available until expended. . . .

MR. YATES: Mr. Chairman, this is an appropriation for the development of a supersonic aircraft under the terms of a contract between the Government and the Boeing Co. The authorization for the appropriation is admittedly section 312(b) of the Federal Aviation Act, which provides as follows:

The Administrator is empowered to undertake or supervise such development work and service testing as tends to the creation of improved aircraft, aircraft engines, propellers, and appliances.

For such purpose, the Administrator is empowered to make pur-

5. 116 CONG. REC. 17310, 17311, 91st Cong. 2d Sess.

chases—including exchange—by negotiation, or otherwise, of experimental aircraft, aircraft engines, propellers, and appliances, which seem to offer special advantages to aeronautics.

There is nothing in either provision which authorizes the spending of public funds for private purposes or private gains. There is nothing in either provision which gives the benefits of whatever development or testing is undertaken to the person or the company doing the work. My point here is if the Government pays for the work, as it is in this case, then the Government is entitled to the product. The Government owns the product because it has paid for it. There is no provision in the law which permits gifts or for making grants. That is not the case in this contract because the plane when built will belong to Boeing. Under the contract, whatever results from the development belongs to Boeing, which has the burden of producing the SST. Under the contract the Government is to be repaid for its money through royalties from the sale of planes, but the planes when completed will belong to the Boeing Co. Yet, as I said, there is no authority on the statute books for loans or grants to the contractor. . . .

THE CHAIRMAN:⁽⁶⁾ The Chair is prepared to rule.

The gentleman from Illinois (Mr. Yates) raised the point of order against the appropriation appearing on page 2 of the bill, entitled "Civil Supersonic Aircraft Development," on the ground that there is no authorization in law for the development of such an aircraft, and for the expenditure provided herein.

The gentleman from Massachusetts (Mr. Boland) in responding to the point of order has cited certain provisions of law which have been recognized by the gentleman from Illinois as pertaining directly to the authorization of the civil supersonic aircraft development program.

The Chair has examined the laws to which attention has been directed. Chapter 20 of title 49, United States Code, relates to the Federal aviation program of the Federal Government, and sets forth the powers and duties of the Federal Aviation Agency and, as has been pointed out, empowers the Administrator to "undertake or supervise such developmental work and service testing as tends to the creation of improved aircraft. For such purpose, the Administrator is empowered to make purchases—of experimental aircraft."

Even broader, I think, is the delegation of authority that appears in Public Law 89-670, establishing the Department of Transportation. Section 6(c)(1) of that act states as follows:

There are hereby transferred to and vested in the Secretary (of Transportation) all functions, powers, and duties of the Federal Aviation Agency, and of the Administrator and other officers and offices thereof, including the development and construction of a civil supersonic aircraft.

The Chair has heard the argument of the gentleman from Illinois with reference to his contention that this must be construed narrowly, but does not find in the law or in the precedents any requirement for as narrow a construction as the gentleman has contended for. It is a broad delegation of

6. Edmond Edmondson (Okla.).

authority, and must not be construed as narrowly as the gentleman has sought.

In view of these citations, which give the Secretary a broad experimental and development authority and bestow upon him in explicit terms the authority to develop and construct a Civil Supersonic Aircraft, the Chair is constrained to overrule the point of order.

Therefore the point of order is overruled.

“Miscellaneous” Items as Authorized

§ 2.12 Language in an appropriation bill making appropriations for certain items “and other miscellaneous expenses, not otherwise provided for” was held to apply to regular expenses that are authorized by law, and in order.

On Mar. 16, 1945,⁽⁷⁾ the Committee of the Whole was considering H.R. 2603, a State, Justice, Commerce, Judiciary, and Federal Loan Agency appropriation. A provision was read as follows, and a point of order was raised as indicated below:

Miscellaneous expenses: For stationery, supplies, materials and equipment, freight, express, and drayage charges, washing towels, advertising, purchase of lawbooks and books of ref-

erence, periodicals and newspapers, communication service and postage; for the maintenance, repair, and operation of one motor-propelled delivery truck; for rent in the District of Columbia, and elsewhere; for official traveling expenses, including examination of estimates for appropriations in the field, and other miscellaneous expenses, not otherwise provided for, necessary to effectively carry out the provisions of the act providing for the administration of the United States courts, and for other purposes, \$26,000. . . .

MR. [ROBERT F.] JONES [of Ohio]: . . . I make a point of order against the language beginning in line 15 with the word “and” and ending in line 16 with the word “for.”

THE CHAIRMAN:⁽⁸⁾ The gentleman makes a point of order against the language reading:

And other miscellaneous expenses not otherwise provided for?

MR. JONES: That is right.

THE CHAIRMAN: Does the gentleman from Michigan desire to be heard on the point of order?

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, this provides merely for regular expenses that are authorized by law. I do not see anything in this subject to a point of order.

THE CHAIRMAN: The Chair fails to see any reason why the language referred to should be subject to a point of order, and unless the gentleman from Ohio can be more specific in his objection the Chair is constrained to overrule the point of order.

The Chair overrules the point of order.

7. 91 CONG. REC. 2378, 79th Cong. 1st Sess.

8. Wilbur D. Mills (Ark.).

***Increasing Appropriation
Within Authorized Limits***

§ 2.13 It is in order to increase the appropriation in an appropriation bill for purposes authorized by law if such increase does not exceed the amount authorized for such objects.

On Mar. 10, 1942,⁽⁹⁾ the Committee of the Whole was considering H.R. 6736, a War Department civil functions appropriation bill. An amendment was allowed which restored part of a sum which had previously been stricken from the bill, where such amendment did not cause the appropriation for the objects under consideration to exceed the total amount for such objects authorized by law. The portion of the bill in question, and proceedings relating to it, were as follows:

Flood control, general: For the construction and maintenance of certain public works on rivers and harbors for flood control, and for other purposes, in accordance with the provisions of the Flood Control Act, approved June 22, 1936, as amended and supplemented, including printing and binding, newspapers, lawbooks, books of reference, periodicals, and office supplies and equipment required in the Office of the Chief of Engineers to carry out the

purposes of this appropriation, and for preliminary examinations and surveys of and contingencies in connection with flood-control projects authorized by law, \$144,973,700: . . .

MR. [DAVID D.] TERRY [of Arkansas]: Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Terry: "On page 7, line 5, strike out \$144,973,700 and insert \$147,078,700."

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, I reserve a point of order against the amendment. . . .

MR. TERRY: Mr. Chairman, the purpose of this amendment is to raise the amount carried in the bill, \$144,973,000 for flood control to an amount that will be sufficient to include the beginning of the work on the Table Rock Reservoir.

Congress has authorized for the White River Basin \$49,000,000 to be appropriated for the prosecution of a comprehensive dual purpose flood control and power program in the White River Basin. According to the testimony in the hearings, \$15,870,000 was allocated from funds previously appropriated against this authorization. The Budget has presented four projects in the White River Basin which total \$37,525,000.

The appropriation of this amount, in conjunction with the \$15,870,000, would result in a total of \$53,395,000, or \$4,395,000 in excess of the \$49,000,000 that has been authorized to be appropriated.

The Committee of the Whole eliminated the \$6,500,000 which was included in the Budget sent down on

9. 88 CONG. REC. 2224, 2225, 77th Cong. 2d Sess.

February 20 for the construction of Table Rock Reservoir. When this matter was up in the subcommittee at the time of the marking up of the bill, a motion was made by a committee member to eliminate Table Rock, but the subcommittee voted against cutting out the Table Rock item. When the bill came up in the full committee on appropriations, on a very close vote, the committee eliminated Table Rock on the theory that—and it was a fact—the appropriation was over the authorization. So the Table Rock item was eliminated, as I say, by a very close vote.

My amendment merely seeks to raise the amount to the limit of the congressional authorization. If we adopt my amendment we add \$2,105,000 to the amount in the bill for flood control, but it will permit considerable work to be done on the Table Rock project this year and the coming fiscal year, and we shall still be within the authorized appropriation limit carried in the Budget estimate for the whole bill, and we shall not be above the \$49,000,000 which has been authorized by the Congress for the White River Basin. . . .

THE CHAIRMAN: ⁽¹⁰⁾ Does the gentleman from Pennsylvania [Mr. Rich] insist on his point of order?

MR. RICH: Mr. Chairman, I insist on my point of order.

The authorization for these two projects was only \$49,000,000. . . .

Mr. Chairman, this exceeds the total amount authorized. . . .

MR. TERRY: Mr. Chairman, the committee in charge of the bill has checked those figures with the Army engineers

in charge of flood control, and the figure that I have included in the amendment is the figure given by the engineers. It shows a total of \$53,395,000 will be appropriated, including \$15,870,000 past amounts, and those in the Budget estimates for 1943, in the sum of \$37,525,000, with a \$49,000,000 authorization. That would exceed the authorization \$4,395,000. If \$6,500,000 for Table Rock is stricken out, the authorizations will exceed the appropriations in an amount of \$2,105,000, which is the amount of my amendment, and is an amount that will not exceed the Budget estimate and will not exceed the \$49,000,000 authorized by the Legislative Committee of this House for the comprehensive plan for the White River Basin.

MR. RICH: Mr. Chairman, I may say the gentleman's own figures show that these are the items to begin the project and they will exceed the amount of the Budget estimate.

THE CHAIRMAN: The Chair is ready to rule.

This section of the bill, lines 4 and 5, is for preliminary examination, surveys, or for contingencies in connection with flood-control projects authorized by law.

The gentleman from Arkansas in his amendment raises the appropriation, but in that raise it only applies to those projects which are authorized by law; therefore, the point of order is overruled.

§ 2.14 An amendment proposing simply to increase an appropriation for a specific object over the amount car-

10. Alfred L. Bulwinkle (N.C.).

ried in the appropriation bill does not constitute a change in law unless such increase is in excess of that authorized.

On Feb. 28, 1939,⁽¹¹⁾ the Committee of the Whole was considering H.R. 4492, a Treasury and Post Office appropriation bill. The following proceedings took place:

Construction of public buildings outside of the District of Columbia: For continuation of construction of, and acquisition of sites for, public buildings outside of the District of Columbia, including the purposes and objects, and subject to the limitations, specified under this head in the Third Deficiency Appropriation Act, fiscal year 1937, and also including those increases in the limits of cost of certain authorized projects, 25 in number, as specified in House Document No. 177, Seventy-sixth Congress, \$30,000,000: *Provided*, That the provisions of section 322 of the act of June 30, 1932 (47 Stat. 412), shall not apply with respect to the rental of temporary quarters for housing Federal activities during the replacement or remodeling of buildings authorized under this or previous acts.

MR. [JAMES F.] O'CONNOR [of Montana]: Mr. Chairman, I offer the following amendment which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. O'Connor: Page 51, line 8, ~~strikeout~~ "\$30,000,000" and insert "\$60,000,000."

11. 84 CONG. REC. 2029, 2030, 76th Cong. 1st Sess.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order that it is not authorized by law. . . .

THE CHAIRMAN:⁽¹²⁾ The Chair is ready to rule.

The gentleman from Montana [Mr. O'Connor] offers an amendment on page 51, line 8, seeking to increase the appropriation there stated, \$30,000,000, to the figure of \$60,000,000, to which amendment the gentleman from New York [Mr. Taber] makes a point of order on the ground that the increase in the item sought to be made is not authorized by law.

The Chair invites attention to Public Resolution 122, Seventy-fifth Congress, title III, Federal Public Buildings, and quotes in part as follows:

. . . is hereby increased from \$70,000,000 to \$130,000,000.

There is a balance remaining of that authorization of \$71,000,000. The pending bill carries an appropriation of \$30,000,000, which would leave \$41,000,000 unappropriated. The amendment of the gentleman from Montana seeks to increase the \$30,000,000 appropriation to \$60,000,000, or seeks to appropriate \$30,000,000 of the remaining \$41,000,000 authorized by law. Therefore, the Chair overrules the point of order.

§ 2.15 Language in an appropriation bill providing an additional amount within the total authorized was held to be in order.

12. Jere Cooper (Tenn.).

On Feb. 25, 1958,⁽¹³⁾ the Committee of the Whole was considering H.R. 10881, a bill making supplemental appropriations. The following provision was read and a point of order was raised as indicated below:

For an additional amount for "Acreage reserve program," fiscal year 1958, \$250,000, which shall be available to formulate and administer an acreage reserve program in accord with the provisions of subtitles A and C of the Soil Bank Act (7 U.S.C. 1821-1824 and 1802-1814), with respect to the 1958 crops, in an amount not to exceed \$175 million in addition to the amount specified for such purposes in Public Law 85-118.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the paragraph on page 4, lines 1 to 9 of the bill on the ground that it changes existing law. I refer the chairman to the language of the appropriation bill which became law on the 2d day of August. . . .

THE CHAIRMAN:⁽¹⁴⁾ The Chair is ready to rule.

The language objected to by the gentleman from New York [Mr. Taber] provides for an additional amount. This of course means an additional amount to that provided for in the authorization contained in Public Law 540 of the 84th Congress.

The Chair therefore feels that in view of the fact that there are ample funds authorized to carry out this pro-

gram, and that the appropriation herein proposed is within the authorized amount, the point of order cannot be sustained.

The Chair overrules the point of order.

Parliamentarian's Note: The law referred to in the point of order was contained in Pub. L. No. 85-118 which provided, "That no part of *this* appropriation shall be used to formulate and administer an acreage reserve program which would result in total compensation being paid to producers in excess of" a designated amount. That limitation, since it applied only to the appropriation in that act, had no applicability to the supplemental appropriation which was in dispute here.

Appropriation of Total Authorization

§ 2.16 Where the law authorizes an appropriation of a specific amount and a paragraph of an appropriation bill appropriates a portion thereof, an amendment changing the figure in the bill to the full amount authorized is in order.

On Mar. 28, 1939,⁽¹⁵⁾ the Committee of the Whole was considering H.R. 5269, an agricultural

13. 104 CONG. REC. 2766, 85th Cong. 2d Sess.

14. Francis E. Walter (Pa.).

15. 84 CONG. REC. 3454, 3455, 76th Cong. 1st Sess.

appropriation bill. The following portion of the bill was before the committee:

FARM TENANCY

To enable the Secretary of Agriculture to carry out the provisions of title I of the Bankhead-Jones Farm Tenant Act, approved July 22, 1937 (7 U.S.C. 1000-1006), including the employment of persons and means in the District of Columbia and elsewhere, exclusive of printing and binding, as authorized by said act, \$24,984,500, together with the unexpended balance of the appropriation made under said act for the fiscal year 1939.

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. Johnson of Oklahoma: Page 93, line 22, after the word "Act", strike "\$24,584,500" and insert in lieu thereof "\$50,000,000."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order that the \$50,000,000 is not authorized by law. . . .

THE CHAIRMAN:⁽¹⁶⁾ The amendment offered by the gentleman from Oklahoma provides that the figures, \$24,984,500, be stricken out and \$50,000,000 inserted in lieu thereof.

This bill is making appropriations for the Department of Agriculture, and for the Farm Credit Administration, for the fiscal year ending June 30, 1940. The Chair has examined the law, and the law provides, on the question of farm tenancy, that not to exceed

\$10,000,000 shall be appropriated for the year ending June 30, 1938; not to exceed \$25,000,000 for the year ending June 30, 1939; and not to exceed \$50,000,000 for each fiscal year thereafter.

Therefore the point of order is overruled.

Effect of Language Limiting Appropriations to Purposes Authorized by Law

§ 2.17 A point of order will not lie against a lump-sum appropriation for river and harbor projects on the ground that some of the projects enumerated in the committee report for allocation of funds have not been authorized, since language in the bill limits use of the appropriation to "projects authorized by law."

On June 18, 1958,⁽¹⁷⁾ a point of order was made against provisions of H.R. 12858 (appropriations for civil functions administered by the Department of the Army and certain agencies of the Department of the Interior), as indicated below:

The Clerk read as follows:

CONSTRUCTION, GENERAL

For the prosecution of river and harbor, flood control, shore protection, and related projects authorized

16. Wright Patman (Tex.).

17. 104 CONG. REC. 11646, 85th Cong. 2d Sess.

by law; detailed studies, and plans and specifications, of projects (including those for development with participation or under consideration for participation by States, local governments, or private groups) authorized or made eligible for selection by law (but such studies shall not constitute a commitment of the Government to construction); and not to exceed \$1,600,000 for transfer to the Secretary of the Interior for conservation of fish and wildlife as authorized by law; to remain available until expended \$577,085,500: . . . *Provided further*, That no part of this appropriation shall be used for projects not authorized by law or which are authorized by a law limiting the amount to be appropriated therefor, except as may be within the limits of the amount now or hereafter authorized to be appropriated. . . .

MR. [JOHN] TABER [of New York]: [I make a point of order against the] paragraph beginning page 3, line 22 and ending on page 5, line 9, on the ground it contains funds the appropriation which has not been authorized by law. The figure there is \$577,085,500. I am advised by the Corps of Engineers, by letter dated June 11, 1958, that there is contained here \$57,702,253 in projects which are not authorized by law.

I am able by referring to the different items on page 5 of the Report that there are the Beaver Reservoir in Arkansas, the Bull Shoals Reservoir, Arkansas and Missouri. . . . There are probably 15 or 20 of those items. . . .

MR. [CLARENCE] CANNON [of Missouri]: [The] gentleman makes a point of order against the figure \$577,085,500 in line 8 on page 4. But the point of order does not lie for the

reason that in the proviso at the bottom of page 4 it is specifically provided:

Provided further, That no part of this appropriation shall be used for projects not authorized by law or which are authorized by a law limiting the amount to be appropriated therefor, except as may be within the limits of the amount now or hereafter authorized to be appropriated.

So the point of order is not well taken, Mr. Chairman.

MR. TABER: Mr. Chairman, these projects are without and beyond the limits of the authorization. That is the point of order.

MR. CANNON: Mr. Chairman, may I also call attention to the language beginning on page 3 as follows:

For the prosecution of river and harbor, flood control, shore protection, and related projects authorized by law.

The figure the gentleman refers to is for this specific purpose.

THE CHAIRMAN [Hale Boggs, of Louisiana]: The Chair is prepared to rule.

The language is very specific. As the chairman of the Committee on Appropriations pointed out a moment ago, beginning on line 23, page 3, the language is as follows:

For the prosecution of river and harbor, flood control, shore protection, and related projects authorized by law.

Then further, as again pointed out by the chairman, there is this language on the bottom of page 4:

That no part of this appropriation shall be used for projects not authorized by law.

Now, that language, in the opinion of the Chair, is quite specific in that none

of these funds regardless of the amount involved, can be used for any project which is not authorized by law.

The Chair overrules the point of order.

§ 2.18 Language in an appropriation bill providing funds for the construction of public works and specifying that none of the funds appropriated should be used for projects not authorized by law “or which are authorized by a law limiting the amount to be appropriated therefor, except as may be within the limits of the amount now or hereafter authorized to be appropriated” was held to limit expenditures to authorized projects and a point of order against the language as legislation was overruled.

On May 24, 1960,⁽¹⁸⁾ during consideration in the Committee of the Whole of an appropriation bill (H.R. 12326), the following paragraph of the bill was read:

For the prosecution of river and harbor . . . and related projects authorized by law; detailed studies, and plans and specifications, of projects . . . authorized or made eligible for selection by law . . .; and not to exceed \$1,400,000 for transfer to the Secretary of the Interior for conservation

of fish and wildlife as authorized by law; \$662,622,300, to remain available until expended: *Provided*, That no part of this appropriation shall be used for projects not authorized by law or which are authorized by a law limiting the amount to be appropriated therefor, except as may be within the limits of the amount now or hereafter authorized to be appropriated: . . .

THE CHAIRMAN:⁽¹⁹⁾ The Chair recognizes the gentleman to make (a) point of order.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make the point of order against the language to be found on page 4, beginning on line 18 and into line 21, “or which are authorized by a law limiting the amount to be appropriated therefor, except as may be within the limits of the amount now or hereafter authorized to be appropriated.”

Mr. Chairman, I make the point of order against that language on the ground that it is legislation on an appropriation bill. I make the further point of order that this is authorizing appropriations for projects not authorized by law.

Mr. Chairman, I would like to quote briefly from “Cannon’s Precedents,” page 63:

As a general proposition whenever a limitation is accompanied by the words “unless,” “except,” “until,” “if,” “however,” there is ground to view the so-called limitation with suspicion, and in case of doubt as to its ultimate effect the doubt should be resolved on the conservative side. By doing so appropriation bills will be relieved of much of the legislation which is being constantly grafted

18. 106 CONG. REC. 10979, 10980, 86th Cong. 2d Sess.

19. Hale Boggs (La.).

upon them and a check given a practice which seems to the Chair, both unwise and in violation of the spirit, as well as the substance, of our rules.

THE CHAIRMAN: Does the gentleman from Michigan [Mr. Rabaut] care to be heard on the point of order?

MR. [LOUIS C.] RABAUT: Mr. Chairman, I wish to explain the language. The legislative committee has placed outside limits on the amount of money which can be spent in a given river basin. Such basin may have a number of dams or projects in it. Without the language these monetary limits could be exceeded by action on an appropriation bill, thus setting aside the action of the legislative committee.

This is strictly a limitation.

MR. GROSS: Mr. Chairman, may I be heard further?

THE CHAIRMAN: The Chair will hear the gentleman.

MR. GROSS: Mr. Chairman, I should like to point out to the Chair that more than one member of the committee has admitted that there are appropriations not authorized by law, that this is a subterfuge, and I say, Mr. Chairman, designed to controvert the rule of the House.

THE CHAIRMAN: Does the gentleman from Iowa care to be heard on the point of order?

MR. [BEN F.] JENSEN [of Iowa]: I do, Mr. Chairman.

Mr. Chairman, I have been on the Committee on Appropriations for the past 18 years. I cannot recall when a point of order has ever been raised against similar language in an appropriation bill. The language is simply limiting an appropriation expenditure,

providing that the expenditure shall not be made until such project is authorized by law. I fail to see, Mr. Chairman, where a point of order could lie against this language because it is purely a simple limitation of expenditure on an appropriation bill; nothing more, nothing less.

THE CHAIRMAN: The Chair is prepared to rule.

It so happens that almost an identical point of order to an identical paragraph was raised on June 18, 1958, by the gentleman from New York (Mr. Taber). It also happens that the present occupant of the chair was in the chair at that time. The Chair ruled then that the language was specific, that there was no question about its referring to the controlling phrase "authorized by law," and none of the appropriation can be expended unless authorized by law.

The Chair overrules the point of order and sustains the ruling made on June 18, 1958.

Parliamentarian's Note: This precedent and the preceding one demonstrate that when a lumpsum appropriation is restricted by specific language in the bill to projects authorized by law, indications in the committee report to the effect that certain unauthorized projects may be contemplated must be conceded to be without legislative effect. Where there is such a conflict in language, the language in the bill itself would prevail. Further discussion of this concept appears in Chapter 26, *infra*.

§ 2.19 A point of order will not lie against an amendment proposing to increase a lump-sum appropriation for construction and rehabilitation of public works projects when language in the bill limits use of the lump-sum appropriation to “projects . . . as authorized by law.”

On June 5, 1959,⁽²⁰⁾ during consideration in the Committee of the Whole of a bill (H.R. 7509) making appropriations for civil functions administered by the Department of Defense, the following proceedings took place:

MR. [HAMER H.] BUDGE [of Idaho]: Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Budge: On page 8, line 5, strike out “\$128,473,239” and insert “\$128,973,-239.” . . .

MR. [CLARENCE] CANNON [of Missouri]: The amendment has just been read and I am reserving a point of order to the amendment.

THE CHAIRMAN:⁽²¹⁾ Will the gentleman from Missouri state his point of order?

MR. CANNON: The point of order is that the project is unauthorized.

MR. BUDGE: Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: The Chair is constrained to overrule the point of order

without further discussion, because the amendment simply changes the amount of the bill without specific reference to any project.

The point of order is overruled.

Parliamentarian's Note: The paragraph to which this amendment was offered began as follows: “Construction and Rehabilitation. For construction and rehabilitation of authorized reclamation projects or parts thereof (including power transmission facilities) and for other related activities, as authorized by law to remain available until expended, \$128,473,239 . . .”

§ 2.20 A point of order was held not to lie against a lump-sum appropriation for increased pay costs, where the objection was based on the ground that a portion of the increase was not yet authorized by law; it was noted that language in the bill limited use of the appropriation to pay costs “authorized by or pursuant to law.”

On May 21, 1969,⁽¹⁾ the Committee of the Whole was considering H.R. 11400, a supplemental appropriation bill. The following

20. 105 CONG. REC. 10061, 86th Cong. 1st Sess.

21. Hale Boggs (La.).

1. 115 CONG. REC. 13267, 13268, 91st Cong. 1st Sess.

paragraphs of the bill were read for amendment:

LEGISLATIVE BRANCH

HOUSE OF REPRESENTATIVES

COMPENSATION OF MEMBERS

Compensation of Members,
\$1,975,000

SALARIES, OFFICERS, AND EMPLOYEES

“Office of the Speaker”, \$4,015

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language on page 23, lines 12, 13, and 14, on the ground that, as admitted by the committee, this contains moneys to be appropriated that have not been authorized by Congress.

THE CHAIRMAN: ⁽²⁾ The Chair will inquire: Does the gentleman's point of order refer to lines 12, 13, and 14?

MR. GROSS: Lines 11, 12, 13, and 14.

THE CHAIRMAN: Does the gentleman from Texas desire to be heard on the point of order?

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, the gentleman, I believe, does not seek to reduce funds for the Office of the Speaker, as shown on line 14. The gentleman is, I believe, only referring to the pay increase for the Speaker and other Members— the item on line 12.

MR. GROSS: Very frankly, I do not know which one of these line items contains all the funds, so I am just trying to take as much as I can to be sure I get the funds covered. If the gentleman will tell me what line they are in I will amend my point of order, with the permission of the Chair.

2. Chet Holifield (Calif.).

MR. MAHON: The funds which have not been authorized are included in line 12, in the \$1,975,000 figure.

MR. GROSS: Those are the only funds that have not been authorized?

MR. MAHON: Yes; that is the figure involved. A small portion of that has not been authorized. . . .

The \$19,835 included in line 12 has not been authorized. That is correct.

MR. GROSS: You mean the \$1,975,000?

MR. MAHON: No; \$19,835 has not been authorized. But it cannot be paid unless it is authorized. Otherwise, it would revert unused to the Treasury.

THE CHAIRMAN: The Chair again is confused. The Chair sees no reference to a figure of \$19,835 in the bill or in the language referred to here.

MR. MAHON: It is part of the figure of \$1,975,000. . . .

THE CHAIRMAN: The Chair is still in a quandary because the language in line 7 says, “for increased pay costs authorized by or pursuant to law.”

MR. MAHON: Mr. Chairman, all compensation due by law to Members of Congress is authorized. If it is not authorized, it cannot be paid.

THE CHAIRMAN: Yes. . . .

The Chair is constrained to hold that the gentleman's point of order is not well taken, because the money amount in line 12 cannot be used for any other purpose than increased pay costs authorized by or pursuant to law. Therefore, the gentleman's point of order is overruled.⁽³⁾

3. See also 106 CONG. REC. 7941, 86th Cong. 2d Sess., Apr. 12, 1960 [H.R. 11666], where a point of order was made against a paragraph of an ap-

Authorizations Enacted After Reporting Appropriation Bill

§ 2.21 A point of order against an item in a general appropriation bill was overruled when it became apparent that the authorizing legislation had been enacted into law between the time the appropriation bill was reported and the time it was considered in the Committee of the Whole.

On May 19, 1970,⁽⁴⁾ during consideration in the Committee of the Whole of the Department of the Interior appropriation bill for fiscal 1971 (H.R. 17619) a point of order was raised against certain language in the bill as follows:

appropriation bill on the ground that the lump-sum figure therein contained, according to the report, funds for one organization in excess of the authorization. Although the point of order was conceded, the language of the bill specified that appropriations in the paragraph were available only for "expenses authorized by the pertinent acts" providing for U.S. participation in certain organizations, and, under the precedents, the quoted language would limit the amount which could be used to the amount actually authorized, so that the point of order would not lie.

4. 116 CONG. REC. 16164, 16165, 91st Cong. 2d Sess.

ANADROMOUS AND GREAT LAKES
FISHERIES CONSERVATION

For expenses necessary to carry out the provisions of the Act of October 30, 1965 (16 U.S.C. 757), \$2,168,000.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, I make a point of order against the language on lines 1 through 3 of page 19 as unauthorized for an appropriation.

THE CHAIRMAN:⁽⁵⁾ Does the gentleman from Washington desire to be heard on the point of order?

MRS. [JULIA BUTLER] HANSEN of Washington: Yes, I do, Mr. Chairman.

May I say, relative to the Anadromous and Great Lakes Fisheries Conservation, the bill was signed by the President of the United States on May 14.

THE CHAIRMAN: The Chair is ready to rule.

The language in the bill indicates that this is under the provisions of the act of October 30, 1965. As the gentleman from Washington points out, the program has recently been reauthorized—Public Law 91-249.

The Chair overrules the point of order.

Repeal of Prior Authorization

§ 2.22 An act providing that notwithstanding any other law, "no appropriation may be made to the National Aeronautics and Space Administration unless previously authorized by legislation hereafter enacted by the Con-

5. Charles M. Price (Ill.).

gress,” was construed to have voided all previous authorizations for appropriations to that agency; hence an appropriation was held not to be in order since not authorized by law enacted after the repeal.

On June 29, 1959,⁽⁶⁾ during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 7978), a point of order was raised against certain provisions of the bill:

The Clerk read as follows:

RESEARCH AND DEVELOPMENT

For an additional amount for “Research and development,” fiscal year 1959, \$18,675,000, to remain available until expended.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, a point of order.

THE CHAIRMAN:⁽⁷⁾ The gentleman will state his point of order.

MR. GROSS: Mr. Chairman, I make the point [of] order against the language on page 4, lines 2, 3, and 4, on the ground that there is no authorization in basic law for this appropriation to be made.

In connection with that, I send a copy of Public Law 86-45 of the 86th Congress to the Chair. I make the point of order on the ground that there is no authorization in basic law for this appropriation to be made. The author-

ization for this appropriation did exist at one time, but it was repealed by the act of June 15, 1959, Public Law 86-45, section 4, which reads as follows:

Sec. 4. Notwithstanding the provisions of any other law, no appropriation may be made to the National Aeronautics and Space Administration unless previously authorized by legislation hereafter enacted by the Congress.

This law, Mr. Chairman, was approved on June 15, 1959. This language clearly indicates, Mr. Chairman, that appropriations can be made for items authorized by legislation which is hereafter enacted, meaning after June 15, 1959. Section 4 clearly states that appropriations can be made only for items authorized after June 15, 1959, hence all previous authorizations are voided. . . .

THE CHAIRMAN: The gentleman from Iowa has made a point of order against that portion of the bill appearing in lines 2, 3, and 4, page 4, and has called the attention of the Chair to section 4 of Public Law 86-45. In view of the language cited, the Chair sustains the point of order.

§ 3. Reappropriations

A House rule states:

No general appropriation bill or amendment thereto shall be received or considered if it contains a provision reappropriating unexpended balances of appropriations; except that this provision shall not apply to appropriations in continuation of appropriations for public works on which work has commenced.⁽⁸⁾

6. 105 CONG. REC. 12125, 86th Cong. 1st Sess.

7. Paul J. Kilday (Tex.).

8. Rule XXI clause 5 (renumbered as clause 6 beginning with the 94th